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STATE HOUSE ANNEX

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Mr. Albert B. LaPierre, Chairman
Plumbers' Licensing Board
Hazen Drive
Concord, New Hampshire 03301

Re: Request for Interpretation of Several Provisions
of RSA Ch. 329-A Relative to the Licensing of
Plumbers

Dear Mr. LaPierre:

You have asked for our opinion concerning the proper interpretation of several provisions of RSA Ch. 329-A relative to plumbers' licenses, and I will address your questions in the order raised.

I. First, you have asked two questions concerning the interpretation of RSA 329-A:10, II, which authorizes the Board to issue a license without an examination to a "corporation ... engaged in the business of plumbing, provided one or more of the officers of the corporation ... holds a master plumber's license under this chapter." With respect to the meaning of the term "officer" as used in this provision, both the New Hampshire Business Corporation Act and general principles of corporate law clearly distinguish between "officers" and "directors." RSA 293-A:50, I defines the "officers" of a corporation as "a president, a secretary ... and a treasurer," each of whom shall be elected by the board of directors in the manner prescribed in the corporation's bylaws, and "such other officers and assistant officers as may be deemed necessary," each of whom is also elected or appointed by the board of directors in accordance with the bylaws. The authority and duties of each "officer" are those which are given to him by the bylaws or by a valid resolution of the board of directors.



In contrast, the "board of directors" is the body which directs the exercise of all of a corporation's powers and its size is separately fixed by the articles of incorporation or bylaws. RSA 293-A:35. The names and addresses of the members of a corporation's first board of directors are listed in its articles of incorporation. RSA 293-A:36. As stated above, the board of directors normally elects the "officers" in the manner set forth in the bylaws.

In sum, although the same person can be both an "officer" and a "director," all directors are certainly not "officers" for purposes of the requirement of RSA 329-A:10, II that at least one "officer" hold a master plumber's license. "Officers" are limited to the president, secretary, treasurer and such other officers as are specifically authorized by the bylaws or by a vote of the board of directors. You should ask for copies of a corporation's bylaws and articles of agreement in any situation in which a question arises as to who is a valid "officer."

In addition, you have asked whether a license may be issued under the same provision to a foreign corporation which is not registered to do business in the State of New Hampshire. Under RSA 293-A:107, no foreign corporation has the right to transact business in this State until it has obtained a certificate of authority to do so from the Secretary of State. See also, RSA 293-A:131. A corporation therefore must either be incorporated in this State or be certified to do business in this State in order to permissibly exercise its authorized powers here. This requirement is somewhat separate and independent from the requirement of RSA 329-A:10, II that a corporation obtain a plumber's license in order to act as a master plumber. However, since a corporation must be "engaged in the business of plumbing" in order to obtain a license under that provision, you can properly require proof that the corporation is authorized to engage in plumbing in this State in order to qualify for the license. If you do not require submission of evidence of a foreign corporation's certificate of authority, however, the corporation will not be able to transact the business of plumbing in this State even if it holds a valid plumber's license.

II. Second, you have asked whether the term "residence" in RSA 329-A:13, IV includes what essentially would be new construction. That provision establishes an exception from the requirements of the chapter for

"an owner or his agent who installs, repairs or replaces plumbing in his own residence or any owner or his agent who makes minor installations, repairs or replacements to property owned by him."

The terms of this exception as a whole indicate that it is intended to apply only (1) to plumbing work done by an individual in the home he normally occupies, and (2) to minor plumbing work done by an individual on property owned by him other than his own home. The exception therefore would not apply, for example, to a builder who erects a new structure on property owned by him and arranges for the installation of all necessary plumbing apparatus. The exception is inapplicable either because the structure is not the home which he normally and regularly occupies, or will occupy, or because the plumbing work is not minor, or both.

III. Finally, you have asked what procedure may be followed in implementing the Board's enforcement authority. As you recognize, under RSA 329-A:14-a, the Board's plumbing inspector has the authority to order the correction or removal of a violation of the State Plumbing Code. The local building authority in the town in which a violation is located thereupon has the authority to enforce the Board's order by ordering the suspension of all unrelated work until the violation is corrected. Additional enforcement authority with respect to violations of the plumbing code resides with the local building authority alone under RSA 330:14.

In addition, RSA 329-A:15 and 16 together provide penalties for the practice of plumbing without a license, for the wrongful procurement of a license and for the violation of any rule or regulation adopted by the Board. Each of these offenses constitutes a violation carrying the penalty of a fine, and these penalties may be enforced by the local law enforcement officers in the city or town in which the offense has been committed.

As these are the sole enforcement provisions set forth in the statute, the Board itself does not appear to have the authority to initiate civil proceedings to obtain injunctive or equitable relief either to correct violations of the plumbing code or to enforce other requirements. The Board of course retains the authority, however, to take disciplinary action in the manner set forth in RSA 329-A:12.

I trust this is responsive to your inquiry. If you have additional questions on these or other matters, please let me know.

Very truly yours,

Betsy S. Westgate

Betsy S. Westgate
Assistant Attorney General
Division of Legal Counsel